

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

UNITED STATES OF AMERICA)	
)	Criminal Case No. 5:20cr00044
v.)	
)	
QUINNON DANIELS,)	By: Elizabeth K. Dillon
Petitioner.)	United States District Judge

MEMORANDUM OPINION AND ORDER

Petitioner Quinnon Daniels, proceeding *pro se*, filed a motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255. (Dkt. No. 64.) Daniels’s primary claim is that he asked his trial counsel to appeal and that counsel failed to do so. In part because Daniels’s former trial counsel is now deceased, which would make it difficult for Daniels to obtain his files, the court appointed counsel to represent Daniels in these § 2255 proceedings, at the request of the United States. (Dkt. No 67 (granting Dkt. No. 66).) As directed, Daniels’ § 2255 counsel filed a supplemental motion (Dkt. No. 69), and the United States has responded (Dkt. No. 72).

In its response, the United States submits that any evidentiary hearing as to whether or not Daniels asked his trial counsel to appeal would be “meaningless” because of the circumstances of the case, and “primarily the passing of Daniels’s trial counsel.” (*Id.* at 1.) Presumably, as argued in the supplemental motion, the United States agrees that Daniels’s own statements are evidence that he directed his counsel to appeal, and there is no evidence and no possible testimony from trial counsel to dispute that contention. Additionally, no appeal was ever filed. Thus, the United States moves the court to grant Daniels’s § 2255 motion and reinstate his right to a direct appeal. (*Id.*)

Having considered the agreement of the parties and the record in this case, the court also agrees that under *Roe v. Flores-Ortega*, 528 U.S. 470, 479 (2000), Daniels is entitled to an out-

of-time appeal. Accordingly, the court will grant Daniels's § 2255 motion and reinstate his ability to appeal.

CONCLUSION AND ORDER

Finding it proper to do so and for the reasons stated by the parties in their respective filings and by the court above, the court hereby ORDERS as follows:

1. The 28 U.S.C. § 2255 motion of Quinon Daniels (Dkt. Nos. 64, 69) is GRANTED insofar as he claims that his counsel failed to file an appeal as directed;
2. The criminal judgment (Dkt. No. 62) is hereby REINSTATED as of the date of this order, and Daniels may file a notice of appeal from the judgment, should he choose to do so, consistent with Federal Rule of Appellate Procedure 4(b) and 4(c);
3. Daniels's § 2255 counsel shall file a timely notice of appeal if directed to do so by Daniels;
4. If a timely notice of appeal is filed either by Daniels or by his § 2255 counsel, § 2255 counsel is hereby APPOINTED to continue to represent Daniels on appeal; and
5. The civil action corresponding with Daniels's § 2255 motion is STRICKEN from the active docket of this court.

The Clerk is further DIRECTED to send a copy of this order to all counsel of record and directly to Quinon Daniels, Register No. 14945, FCI Butner Medium I, Old NC Hwy 75, Butner, NC 27509.

Entered: October 13, 2023.

/s/ Elizabeth K. Dillon
Elizabeth K. Dillon
United States District Judge